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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,306	04/16/2002	Francis Showering	NOVAP100US	8228

7590

02/27/2004

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Cleveland, OH 44114

EXAMINER

SMALLEY, JAMES N

ART UNIT	PAPER NUMBER
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3727

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DATE MAILED: 02/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/009,306

Applicant(s)

SHOWERING, FRANCIS

Examiner

James N Smalley

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 58-77 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 58-77 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 58-60, 63-68, 70-75 and 77 are rejected under 35 U.S.C. 102(b) as being anticipated by Ohmi et al. US 5,762,217.

Ohmi '217 discloses a Resin Cap, comprising a cap (1) with a segmented skirt, and ring (2) configured for retaining the cap in the applied position. The ring is connected to the skirt by a plurality of frangible bridges (11). In col. 2, lines 52-65, we are taught the ring circumferentially binds the cap to the container rim by preventing the skirt from broadening. Further, in col. 6, lines 59-65, we are taught the skirt is brought into contact with the ring, thus preventing the outward expansion of the skirt, and the frangible bridges are protected from breaking. In col. 4, line 58, we are told the closure could be applied to a carbonated beverage container, inherently indicating the closure can withstand container pressures of 60 psi.

3. Claims 58-60, 63-68, 70-75 and 77 are rejected under 35 U.S.C. 102(b) as being anticipated by Bosl et al. US 6,116,444.

Bosl '444 discloses a plastic closure cap, comprising a cap body (2) and a continuous retaining ring (7, in fig. 5) fixed to the cap by frangible bridges (11). In col. 5, lines 27-32, we are taught the stretching of the ring must be kept small in relation to the stretching of the skirt, so that the ring will apply a retaining force to the frangible lines, keeping them intact. The engagement device is formed of a plurality of lugs (13) and the skirt is segmented, as it is divided up by frangible lines (9). It is further disclosed in col. 1, lines 53-57, we are taught the cap will be applied to carbonated beverage containers, inherently implying the closure can withstand container pressures of 60 psi.

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Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 62 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ohmi et al. US 5,762,217 as applied above to claim 58.

Ohmi '217 does not teach the diameter of the container, although the closure could be molded to fit any sized container. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

6. Claim 62 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bosl et al. US 6,116,444 as applied above to claim 58.

Bosl '444 does not teach the diameter of the container, although the closure could be molded to fit any sized container. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

7. Claims 61 and 76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohmi et al. US 5,762,217 in view of Grussen US Re. 27,648.

Ohmi '217 does not teach a plurality of ridges on a surface of the closure facing the band.

Grussen '648 teaches a plurality of ridges (6) for engagement with a user's thumb during the opening process, disclosing this benefit in col. 3, lines 49-51.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a plurality of ridges, as taught by Grussen '648, to the closure of Ohmi '217, motivated

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by the benefit of a roughened surface for engagement by a user's thumb while removing the circular band.

8. Claims 61 and 76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bosl et al. US 6,116,444 in view of Grussen US Re. 27,648.

Bosl '444 does not teach a plurality of ridges on a surface of the closure facing the band.

Grussen '648 teaches a plurality of ridges (6) for engagement with a user's thumb during the opening process, disclosing this benefit in col. 3, lines 49-51.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a plurality of ridges, as taught by Grussen '648, to the closure of Bosl '444, motivated by the benefit of a roughened surface for engagement by a user's thumb while removing the circular band.

9. Claim 69 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ohmi et al. US 5,762,217 in view of Bean US 4,216,872.

Ohmi '217 does not disclose the abutment surface inclined at an angle less than that of the ramp surface.

Bean '872 shows such an abutment surface angle, in fig. 5. One having ordinary skill would recognize that the flatter the abutment surface is, relative to horizontal, the greater the upward force necessary for removal of the closure will be.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the abutment surface of Ohmi '217, inclining the abutment surface at an angle less than that of the ramp surface, motivated by the benefit of a closure resistant to upward forcing, possibly from carbonation, thus maintaining greater contact between the closure and the container.

10. Claim 69 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bosl et al. US 6,116,444 in view of Bean US 4,216,872.

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Bosl '444 does not disclose the abutment surface inclined at an angle less than that of the ramp surface.

Bean '872 shows such an abutment surface angle, in fig. 5. One having ordinary skill would recognize that the flatter the abutment surface is, relative to horizontal, the greater the upward force necessary for removal of the closure will be.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the abutment surface of Bosl '444, inclining the abutment surface at an angle less than that of the ramp surface, motivated by the benefit of a closure resistant to upward forcing, possibly from carbonation, thus maintaining greater contact between the closure and the container.

Response to Arguments

11. Applicant's arguments with respect to claims 33-57 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

US 4,165,817

US 3,532,244

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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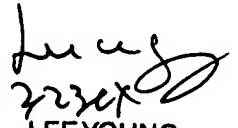
the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N Smalley whose telephone number is (703) 605-4670. The examiner can normally be reached on M-Th 8-5:30, Alternate Fri 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jns


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